



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

OCT 16 2017

CERTIFIED MAIL 70052570000145356415  
RETURN RECEIPT REQUESTED

Mr. Rance Perry  
Black Warrior Minerals, Inc.  
4788 Highway 78 West  
Cordova, Alabama 35550

RE: Administrative Compliance Order on Consent  
Docket No. CWA-04-2016-5751

Dear Mr. Perry:

Enclosed please find an executed copy of the above-referenced Administrative Compliance Order on Consent (AOC) Docket No. CWA-04-2016-5751. This AOC requires the restoration of streams associated with ponds 20 and 21 within the Seaboard Mine that were impacted without U.S. Army Corps of Engineers' (Corps) authorization, the purchase of credits from Big Sandy Mitigation Bank for any temporal loss of aquatic resources, and to secure Corps' nationwide permit number 32 authorization to complete all restoration work and to authorize any remaining fill material. The Seaboard Mine is located west of Alabama State Route 216, approximately 4 miles west of Brookwood, Tuscaloosa County, Alabama, near 33° 14' 50" north latitude and 87° 23' 29" west longitude. The U.S. Environmental Protection Agency has retained the original copy for our enforcement files.

Thank you for your cooperation in this matter. If you have any questions regarding this AOC, please contact Mr. Mike Wylie at (404) 562-9409.

Sincerely,

A handwritten signature in black ink, appearing to read "MSW", written over the printed name "Mary S. Walker".

Mary S. Walker  
Director  
Water Protection Division

Enclosure

cc: Ms. Courtney Shea, U.S Army Corps of Engineers

Mr. Jeff Kitchens, Alabama Department of Environmental Management

Mr. L. Stephen Blankenship, McGehee Engineering Corporation

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

**IN THE MATTER OF:**

**BLACK WARRIOR MINERALS, INC.**  
**Cordova, Alabama**

**RESPONDENT**

---

)  
)  
) **ADMINISTRATIVE**  
) **COMPLIANCE ORDER**  
) **ON CONSENT**  
)

) **Docket No.: CWA-04-2016-5751**  
)

**I. Statutory Authority**

1. Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency ("EPA") finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent ("AOC") is issued pursuant to the authority vested in EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. The authority to issue this AOC has been delegated from the Administrator of the EPA to the Regional Administrator of the EPA, Region 4. The Regional Administrator has further delegated this authority to the Director of the Water Protection Division, EPA, Region 4.

**II. Findings of Fact and Determinations of Law**

Upon Consent of the parties by their attorneys and authorized officials, the parties stipulate and find that the following facts are true and substantiated:

3. This AOC pertains to the unauthorized deposition of dredged and/or fill material into jurisdictional waters of the United States in the course of surface coal mining at two impounded stream locations: pond 20 adversely affected approximately 1,440 linear feet (lf) of waters and pond 21 adversely affected approximately 813 lf of waters. The ponds are located west of Alabama State Route 216, approximately 4 miles west of Brookwood, Tuscaloosa County, Alabama, near 33° 14' 50" north latitude and 87° 23' 29" west longitude ("Discharge Area") (See Exhibits A and B).

4. Black Warrior Minerals, Inc., ("Respondent"), is a company duly organized under the laws of the State of Alabama and, as such, is a person within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).



5. Respondent, at all times relevant to this AOC, was the owner and/or operator of the Site, an approximately 305-acre coal mine located west of Alabama State Route 216, approximately 4 miles west of Brookwood, Tuscaloosa County, Alabama, near 33° 14' 50" north latitude and 87° 23' 29" west longitude ("the Site") that contained the Discharge Area.
6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except in compliance with a permit issued under, inter alia, Section 404 of the CWA, 33 U.S.C. § 1344
7. On September 14, 2009, the United States Army Corps of Engineers (Corps) issued nationwide permit No. SAM-2009-01271-CMS to BWM to mine coal in regulated waters during the construction of the Seaboard Mine.
8. The Corps conducted a compliance inspection of the Seaboard Mine on September 16, 2015. During the inspection, the Corps found that 2 ponds had been constructed that were not authorized by BWM's permit. Pond 20 was constructed after BWM's permit expired and BWM never submitted Pond 21 and its associated tributary for Corps permit review.
9. The Corps scheduled a meeting to discuss the Seaboard's permit and potential CWA permitting issues related to ponds 20 and 21 with McGehee Engineering, representatives of BWM. In that meeting McGehee staff reported to the Corps that ponds 20 and 21 were constructed by BWM without Corps permits.
10. The Corps conducted another investigation of the Seaboard site on April 21, 2015. During the site investigation, the Corps confirmed that ponds 20 and 21 were constructed without valid CWA, Section 404 permits.
11. The Corps transmitted a notice of violation (NOV) to BWM on April 23, 2015, setting out the results of their investigation.
12. Commencing on or about January 2104 in Pond 20 and its associated tributary and April 2015 in pond 21 and its associated tributary to the present, Respondent, and/or those acting on behalf of the Respondent discharged dredged and/or fill material into two unnamed tributaries on the Site. Respondent used trackhoes and bulldozers to construct ponds and impact streams during unauthorized activities associated with coal mining. To date, the unauthorized dredged and/or fill material remains in waters of the United States.
13. Respondent's unauthorized activities impacted approximately 2,253 lf of two unnamed tributaries that flow to Hurricane Creek which is tributary to Lake Oliver, an impounded lake on the Black Warrior River, a navigable-in-fact water of the United States.
14. The discharged dredged and/or fill material, including earthen material deposited at the Discharge Area, are "pollutants" as defined under Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The bulldozers and track hoes employed by the Respondent to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. A "discharge of a pollutant" as defined in Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), is any addition of any pollutant to navigable waters from any point source.

17. Respondent's placement of the dredged and/or fill material into the Discharge Area constitutes a "discharge of pollutants" as defined in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

18. The term "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), means the waters of the United States, including the territorial seas.

19. The Discharge Area includes "navigable waters" as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

20. At no time during the discharge of dredged and/or fill material into the Discharge Area from January 2104 for Pond 20 and April 2015 for Pond 21, did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material by Respondent. Each discharge by the Respondent of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

21. Each day the material discharged by the Respondent remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

22. Therefore, Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants into navigable waters without a permit.

### **III. Agreement On Consent**

Based on the foregoing **FINDINGS OF FACT AND DETERMINATIONS OF LAW** and under the authority of Section 309(a) of the CWA, (33 U.S.C. § 1319(a)), THE RESPONDENT HEREBY AGREES AND CONSENTS TO THE PROVISIONS OF THE PARAGRAPHS BELOW.

23. a. The Respondent will implement the August 2016 McGehee Engineering Corporation's Black Warrior Minerals' Mitigation Plan (Mitigation Plan) for the Seaboard Mine Site (enclosed CD). Respondent will restore approximately 2,253 lf of impacted tributaries to the Black Warrior River, purchase mitigation credits from Big Sandy Mitigation



Bank for any temporal loss of aquatic resources, and secure Corps' nationwide permit number 32 authorization to complete all restoration work and to authorize any remaining fill material.

b. The Respondent shall notify EPA of the anticipated restoration construction start date within fifteen days after receipt of the signed AOC. Within thirty days after completion of restoration, the Respondent shall submit a written statement of completion and schedule an inspection of the restored Site.

c. The Respondent shall annually inspect the restored streams for a minimum of five years and report on success criteria as described in the Mitigation Plan. Riparian vegetation restoration shall be monitored for a minimum of ten years or until success criteria is achieved as described in Mitigation Plan. Respondent shall submit restoration and monitoring reports to EPA that include:

1. Date of inspection;
2. Color photographs from the same locations;
3. Success of stream restoration;
4. Percentage of riparian vegetation survival; and
5. Percentage of riparian vegetation replanted to ensure success criteria.

24. Any documentation required to be submitted in this agreement shall be mailed to the following address:

Mike Wylie  
U.S. Environmental Protection Agency  
Water Protection Division  
Wetlands Enforcement Section, 15<sup>th</sup> Floor  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

#### **IV. General Provisions**

25. The provisions of this AOC shall apply to and be binding upon the Respondent, , servants, employees, successors, and assigns.

26. If the Site is transferred prior to completion of the requirements of this AOC, such transfer will not absolve the Respondent from the responsibility of implementing and completing the obligations under this AOC or insuring that these requirements have been met. Completion of the requirements of this AOC will remain the responsibility of the Respondent.

27. This AOC is not and shall not be construed to be a permit under the CWA or its implementing regulations. This AOC does not exempt the Respondent from compliance with, or the requirements to obtain, any city, county, or state permits or authorizations before proceeding with the restoration activities.

28. Respondent acknowledges the jurisdiction of EPA to issue this AOC.

29. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent(s) may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to, any right of judicial review of this AOC under the Administrative Procedure Act 5 U.S.C. §§ 701-706.

30. This AOC does not constitute a waiver, suspension, or modification of the terms and conditions of the CWA or its implementing regulations. Issuance of or compliance with this AOC does not relieve the Respondent from responsibility to comply with all requirements of the CWA, its implementing regulations, and any legal order issued under the CWA or its regulations.

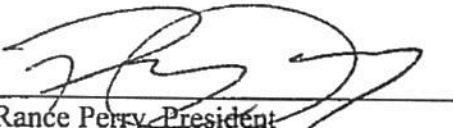
31. Issuance of this AOC shall not be deemed an election by EPA to forego any Administrative, Civil, or Criminal action to seek penalties, fines, or other appropriate relief under the CWA for the violations set forth in the Findings.

32. Failure to comply with the terms of this AOC may result in your liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this AOC, a United States District Court may impose civil penalties if the court determines that Respondent has violated the CWA and failed to comply with the terms of the AOC.

**V. Effective Date**


33. This AOC shall become effective upon the Respondent's receipt of the signed AOC.

**FOR THE RESPONDENT:**

  
\_\_\_\_\_  
Rance Perry, President  
Black Warrior Minerals, Inc.

Date: 8-31-17

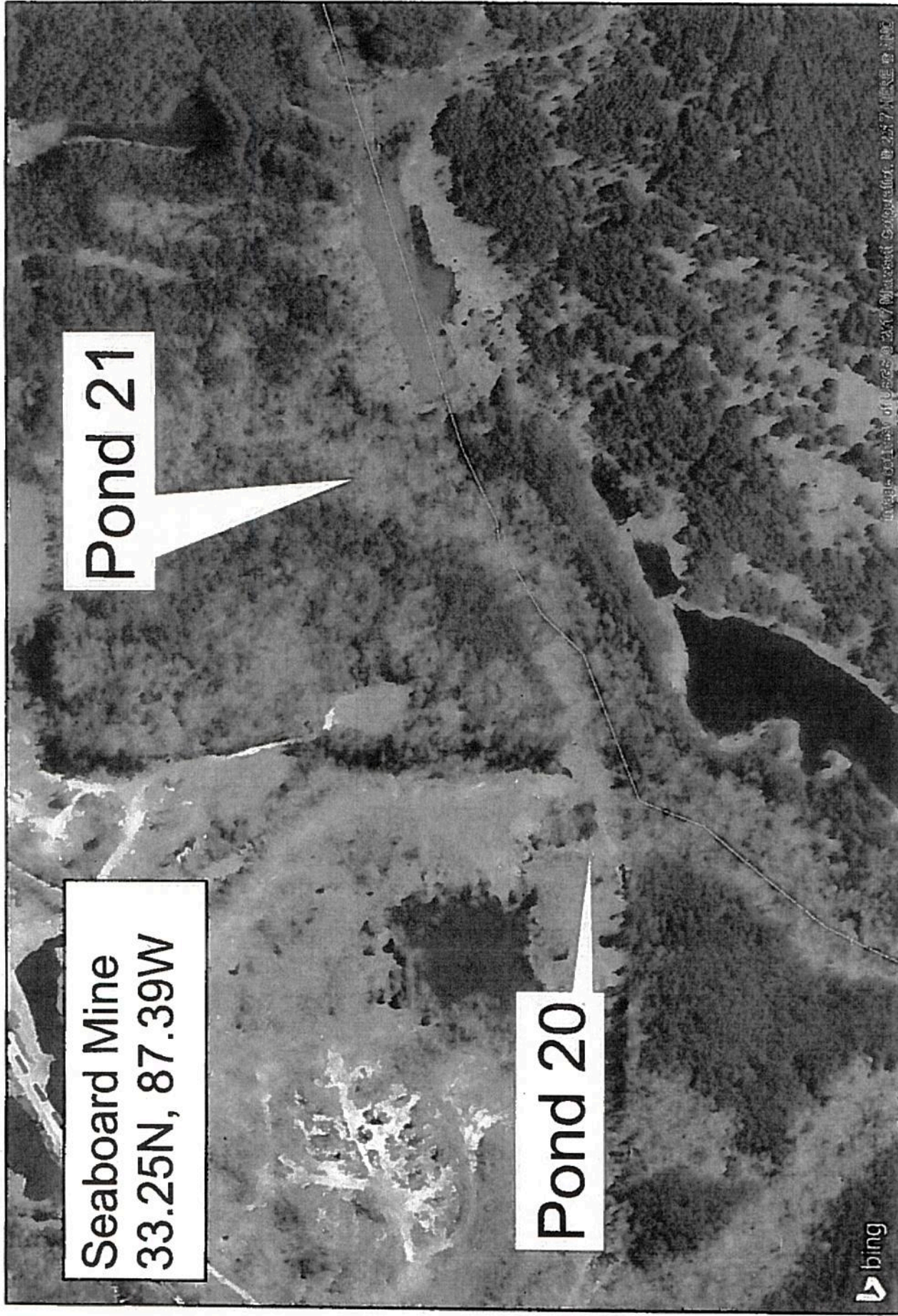
**FOR THE U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

  
\_\_\_\_\_  
Mary S. Walker  
Director  
Water Protection Division  
U.S. Environmental Protection Agency  
Region 4

Date: 10/16/17



# Exhibit A



Black Warrior Minerals, Inc.  
Pond Discharge Areas

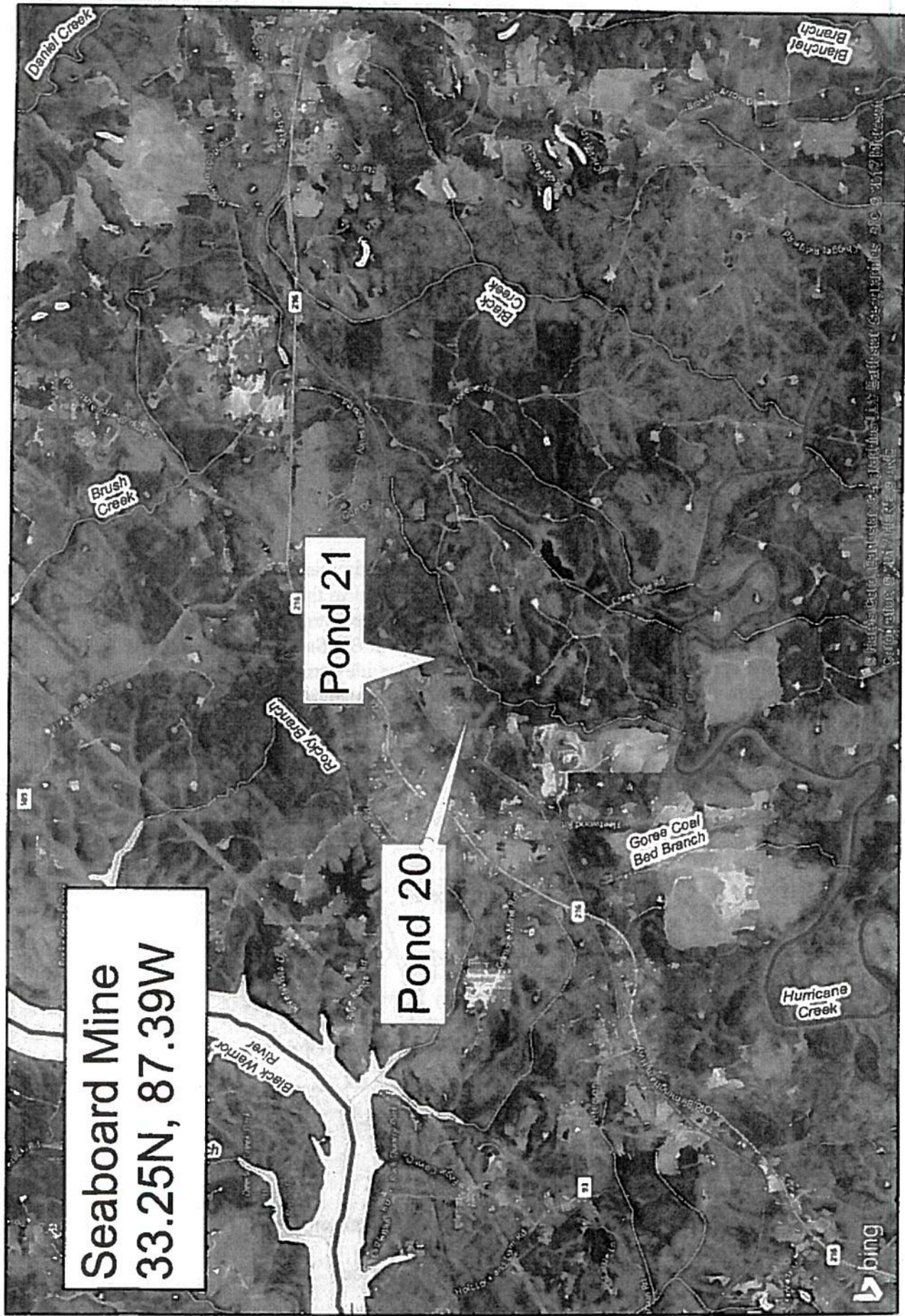


# Exhibit B

Seaboard Mine  
33.25N, 87.39W

Pond 21

Pond 20



Black Warrior Minerals, Inc.  
Pond Discharge Areas





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303

OCT 16 2017

CERTIFIED MAIL 70052570000145356415  
RETURN RECEIPT REQUESTED

Mr. Rance Perry  
Black Warrior Minerals, Inc.  
4788 Highway 78 West  
Cordova, Alabama 35550

RE: Administrative Compliance Order on Consent  
Docket No. CWA-04-2016-5751

Dear Mr. Perry:

Enclosed please find an executed copy of the above-referenced Administrative Compliance Order on Consent (AOC) Docket No. CWA-04-2016-5751. This AOC requires the restoration of streams associated with ponds 20 and 21 within the Seaboard Mine that were impacted without U.S. Army Corps of Engineers' (Corps) authorization, the purchase of credits from Big Sandy Mitigation Bank for any temporal loss of aquatic resources, and to secure Corps' nationwide permit number 32 authorization to complete all restoration work and to authorize any remaining fill material. The Seaboard Mine is located west of Alabama State Route 216, approximately 4 miles west of Brookwood, Tuscaloosa County, Alabama, near 33° 14' 50" north latitude and 87° 23' 29" west longitude. The U.S. Environmental Protection Agency has retained the original copy for our enforcement files.

Thank you for your cooperation in this matter. If you have any questions regarding this AOC, please contact Mr. Mike Wylie at (404) 562-9409.

Sincerely,

Mary S. Walker  
Director  
Water Protection Division

Enclosure

cc: Ms. Courtney Shea, U.S. Army Corps of Engineers

Mr. Jeff Kitchens, Alabama Department of Environmental Management

Mr. L. Stephen Blankenship, McGehee Engineering Corporation

7005 2570 0001 4535 6415

CERTIFIED MAIL <sup>TM</sup> RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at <a href="http://www.usps.com">www.usps.com</a>	
OFFICIAL USE	
Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Registered Mail <sup>SM</sup> Fee (En)	
Mr. Rance Perry	
Black Warrior Minerals, Inc.	
4788 Highway 78 West	
Cordova, Alabama 35550	
AOC - CWA-04-2016-5751	

PS Form 3800, June 2002 See Reverse for Instructions

OCT 16 2017